

Professor Jessica Smith outlined the following five specific issues regarding the Uniform Pretrial Release and Detention Act:

- (1) Preventative Detention Procedures.
- (2) Citation vs. Arrest.
- (3) General Hearing Procedures.
- (4) Limitations on Financial Conditions.
- (5) Supportive and Supervisory Services.

Staff Note: Current law includes law effective beginning December 1, 2021. Particularly relevant language is highlighted.

Uniform Pretrial Release and Detention Act	Current NC Law	Staff Notes
<i>Issue 1: Preventative Detention Procedures</i>		
<p>SECTION 308. TEMPORARY PRETRIAL DETENTION.</p> <p>(a) At the conclusion of a release hearing, the court may issue an order to detain the arrested individual temporarily until a detention hearing, or may impose a financial condition of release in an amount greater than the individual is able to pay from personal financial resources not later than [24] hours after the condition is imposed, only if the individual is charged with a covered offense and the court determines by clear and convincing evidence that:</p> <p>(1) it is likely that the individual will abscond, obstruct justice, violate an order of protection, or cause significant harm to another person and that no less restrictive condition is sufficient to address satisfactorily the relevant risk the court identifies under Section 303;</p> <p>(2) the individual has violated a condition of an order of pretrial release for a pending criminal charge; or</p> <p>(3) [in a case in which the individual is charged with a felony,]it is extremely likely the individual will not</p>	<p>§ 15A-533. Right to pretrial release in capital and noncapital cases.</p> <p>(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Health and Human Services, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.</p> <p>(b) A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.</p> <p>(c) A judge may determine in his discretion whether a defendant charged with a capital offense may be released before trial. If he</p>	<p>Prof. Smith pointed out a major difference between the Uniform Act and current law: the Uniform Act allows a court to order temporary pretrial detention under Section 308 and pretrial detention under Section 403 (de jure detention), whereas current law allows a court to impose a secured bond as a condition of pretrial release (de facto detention, if the amount of the bond is high enough).</p> <p>Prof. Smith also pointed out that the Uniform Act does not address what risk assessment tools a</p>

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<p>appear, and no less restrictive condition is sufficient to address satisfactorily the relevant risk the court identifies under Section 303.</p> <p>(b) If under subsection (a) the court issues an order to detain the arrested individual temporarily or that imposes a financial condition of release in an amount greater than the individual is able to pay from personal financial resources not later than [24] hours after the condition is imposed, the court shall state its reasons in a record, including why no less restrictive condition or combination of conditions is sufficient.</p> <p>SECTION 403. PRETRIAL DETENTION.</p> <p>(a) At a detention hearing, the court shall consider the criteria in Sections 303 through 307 to determine whether to issue an order of pretrial detention or continue, amend, or eliminate a restrictive condition that has resulted in continued detention of the detained individual. If failure to satisfy a secured appearance bond or pay a fee is the only reason the individual continues to be detained, the fact of detention is prima facie evidence that the individual is unable to satisfy the bond or pay the fee.</p> <p>(b) The court at a detention hearing may issue an order of pretrial detention or continue a restrictive condition of release that results in detention only if the detained individual is charged with a covered offense and the court determines by clear and convincing evidence that:</p> <p>(1) it is likely that the individual will abscond, obstruct justice, violate an order of protection, or cause significant harm to another person and no less restrictive condition is sufficient to address satisfactorily the relevant risk the court identifies under Section 303; or</p>	<p>determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.</p> <p>(d) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds the following:</p> <p>(1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;</p> <p>(2) The drug trafficking offense was committed while the person was on pretrial release for another offense; and</p> <p>(3) The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.</p> <p>(e) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds all of the following:</p> <p>(1) There is reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal gang, as defined in G.S. 14-50.16A(1).</p> <p>(2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense.</p>	<p>court may use in determining whether to order pretrial detention.</p> <p>Prof. Smith also identified two important sub-issues:</p> <p>1. The Uniform Act allows a court to order pretrial detention only if the individual is charged with a "covered offense" but leaves it up to the state to define what a covered offense is. What is included as a "covered offense" is a major issue.</p> <p>2. Prof. Smith pointed out if the Uniform Act were enacted, it would need to harmonize with a victim's right to notice of court proceedings. See Article 46 (Crime Victims' Rights Act) of Chapter 15A of the General Statutes. "Court proceeding" has the following definition in that Article:</p>

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<p>(2) [in a case where the individual is charged with a felony,]it is extremely likely that the individual will not appear, and no less restrictive condition is sufficient to address satisfactorily the relevant risk the court identifies under Section 303.</p> <p>(c) If under subsection (b) the court issues an order of pretrial detention or continues a restrictive condition of release that results in detention, the court shall state its reasons in a record, including why no less restrictive condition or combination of conditions is sufficient.</p>	<p>(3) The person (i) has been previously convicted of an offense described in G.S. 14-50.16 through G.S. 14-50.20 or (ii) has been convicted of a criminal offense and received an enhanced sentence for that offense pursuant to G.S. 15A-1340.16E, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.</p> <p>(f) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds there is reasonable cause to believe that the person committed a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm; and the judicial official also finds any of the following:</p> <p>(1) The offense was committed while the person was on pretrial release for another felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm.</p> <p>(2) The person has previously been convicted of a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm and not more than five years have elapsed since the date of conviction or the person's release for the offense, whichever is later.</p> <p>(g) Persons who are considered for bond under the provisions of subsections (d), (e), and (f) of this section may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community. (1973, c. 1286, s. 1; 1981, c. 936, s. 2; 1997-443, s. 11A.118(a); 1998-208, s. 1; 2008-214, s. 4; 2013-298, s. 1; 2017-194, s. 19.)</p> <p>§ 15A-534. Procedure for determining conditions of pretrial release.</p>	<p>"A critical stage of the post-arrest process heard by a judge in open court involving a plea that disposes of the case or the conviction, sentencing, or release of the accused, including the hearings described in G.S. 15A-837. The term does not include the preliminary proceedings described in Article 29 of Chapter 15A of the General Statutes. If it is known by law enforcement and the district attorney's office that (i) the defendant and the victim have a personal relationship as defined in G.S. 50B-1(b) and (ii) the hearing may result in the defendant's release, efforts will be made to contact the victim."</p>

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	<p>(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:</p> <ul style="list-style-type: none"> (1) Release the defendant on his written promise to appear. (2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official. (3) Place the defendant in the custody of a designated person or organization agreeing to supervise him. (4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety. (5) House arrest with electronic monitoring. <p>If condition (5) is imposed, the defendant must execute a secured appearance bond under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1), (a2), (a4), or (a6), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release. The judicial official may include as a condition of pretrial release that the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring system, of a type approved by the Division of Adult</p>	

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	<p>Correction and Juvenile Justice of the Department of Public Safety, and that any violation of this condition be reported by the monitoring provider to the district attorney.</p> <p>(b) The judicial official in granting pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless he determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Upon making the determination, the judicial official must then impose condition (4) or (5) in subsection (a) above instead of condition (1), (2), or (3), and must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge pursuant to G.S. 15A-535(a).</p> <p>(c) In determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his record of convictions; his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.</p> <p>(d) The judicial official authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of his release; and advise him that his arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy given the defendant and any surety, or the agent thereof who</p>	

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	<p>is executing the bond for the defendant's release pursuant to that order.</p> <p>(d1) When conditions of pretrial release are being imposed on a defendant who has failed on one or more prior occasions to appear to answer one or more of the charges to which the conditions apply, the judicial official shall at a minimum impose the conditions of pretrial release that are recommended in any order for the arrest of the defendant that was issued for the defendant's most recent failure to appear. If no conditions are recommended in that order for arrest, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured or unsecured bond for the charges or, if no bond has yet been required for the charges, in the amount of at least one thousand dollars (\$1,000). The judicial official shall also impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The judicial official shall indicate on the release order that the defendant was arrested or surrendered after failing to appear as required under a prior release order. If the information available to the judicial official indicates that the defendant has failed on two or more prior occasions to appear to answer the charges, the judicial official shall indicate that fact on the release order.</p> <p>(d2) When conditions of pretrial release are being determined for a defendant who is charged with a felony offense and the defendant is currently on probation for a prior offense, a judicial official shall determine whether the defendant poses a danger to the public prior to imposing conditions of pretrial release and must record that determination in writing. This subsection shall apply to any judicial official authorized to determine or review the defendant's eligibility for release under any proceeding authorized by this Chapter.</p>	

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	<p>(1) If the judicial official determines that the defendant poses a danger to the public, the judicial official must impose condition (4) or (5) in subsection (a) of this section instead of condition (1), (2), or (3).</p> <p>(2) If the judicial official finds that the defendant does not pose a danger to the public, then conditions of pretrial release shall be imposed as otherwise provided in this Article.</p> <p>(3) If there is insufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be retained in custody until a determination of pretrial release conditions is made pursuant to this subdivision. The judicial official that orders that the defendant be retained in custody shall set forth, in writing, the following at the time that the order is entered:</p> <p style="padding-left: 40px;">a. The defendant is being held pursuant to this subdivision.</p> <p style="padding-left: 40px;">b. The basis for the judicial official's decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information.</p> <p style="padding-left: 40px;">c. A date, within 96 hours of the time of arrest, when the defendant shall be brought before a judge for a first appearance pursuant to Article 29 of this Chapter. If the necessary information is provided to the court at any time prior to the first appearance, the first available judicial official shall set the conditions of pretrial release. The judge who reviews the defendant's eligibility for release at the first appearance shall determine the conditions of pretrial release as provided in this Article.</p>	<p>The phrase "96 hours" in G.S. 15A-534(d2)(3)c. needs to be changed to "72 hours" to conform to G.S. 15A-601, as amended by S.L. 2021-138, s. 14(a). G.S. 15A-601 is set out below.</p>

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	<p>(d3) When conditions of pretrial release are being determined for a defendant who is charged with an offense and the defendant is currently on pretrial release for a prior offense, the judicial official may require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured or unsecured bond for the charges or, if no bond has yet been required for the charges, in the amount of at least one thousand dollars (\$1,000).</p> <p>(e) A magistrate or a clerk may modify his pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him at any time prior to:</p> <p style="padding-left: 40px;">(1) In a misdemeanor case tried in the district court, the noting of an appeal; and</p> <p style="padding-left: 40px;">(2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable cause hearing.</p> <p>After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by him, at any time prior to the time set out in G.S. 15A-536(a).</p> <p>(f) For good cause shown any judge may at any time revoke an order of pretrial release. Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release in accordance with this Article.</p>	

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	<p>(g) In imposing conditions of pretrial release and in modifying and revoking orders of release under this section, the judicial official must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials.</p> <p>(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is terminated at an earlier time if:</p> <ul style="list-style-type: none"> (1) A judge authorized to do so releases the obligor from his bond; or (2) The principal is surrendered by a surety in accordance with G.S. 15A-540; or (3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G.S. 15A-544.3; or (4) Prayer for judgment has been continued indefinitely in the district court; or (5) The court has placed the defendant on probation pursuant to a deferred prosecution or conditional discharge. <p>(i) Repealed by Session Laws 2012-146, s. 1(b), effective December 1, 2012. (1973, c. 1286, s. 1; 1975, c. 166, s. 13; 1977, 2nd Sess., c. 1134, s. 5; 1987, c. 481, s. 1; 1989, c. 259; 2001-487, s. 46.5(b); 2009-412, s. 1; 2009-547, ss. 3, 4, 4.1; 2010-94, s. 12.1; 2010-96, s. 3; 2011-191, s. 5; 2012-146, s. 1(a), (b); 2013-298, s. 2; 2015-195, s. 11(n); 2015-247, s. 9(a); 2016-107, s. 1; 2017-186, s. 2(ww).)</p>	

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<i>Issue 2: Citation vs. Arrest</i>		
<p>SECTION 201. AUTHORITY FOR [CITATION] OR ARREST.</p> <p>(a) If [an authorized official] has probable cause to believe an individual is committing or has committed an offense, [the authorized official] may issue the individual a [citation] or take other action authorized by law.</p> <p>(b) Except as otherwise provided by law of this state other than this [act], [an authorized official] may arrest an individual only if:</p> <p>(1) the individual is subject to an order of detention from any jurisdiction, including an arrest warrant or order of revocation of probation, [parole], or release; or</p> <p>(2) subject to subsection (c), [the authorized official] has probable cause to believe the individual is committing or has committed an offense.</p> <p>(c) If an offense under subsection (b)(2) is [a misdemeanor or non-criminal offense] [punishable by not more than [six months] in jail or prison], [an authorized official] may not arrest the individual unless:</p> <p>(1) the offense is [insert the offenses or offense types for which the state chooses to authorize arrest];</p> <p>(2) the individual fails to provide adequate identification, orally or through documentation, as lawfully requested by [the authorized official];</p> <p>(3) the individual is in violation of a condition or order of</p>	<p>§ 15A-401. Arrest by law enforcement officer. **as amended by Section 1(a) of S.L. 2021-137 and Section 16(a) of S.L. 2021-138**</p> <p>(a) Arrest by Officer Pursuant to a Warrant. –</p> <p>(1) Warrant in Possession of Officer. – An officer having a warrant for arrest in his possession may arrest the person named or described therein at any time and at any place within the officer's territorial jurisdiction.</p> <p>(2) Warrant Not in Possession of Officer. – An officer who has knowledge that a warrant for arrest has been issued and has not been executed, but who does not have the warrant in his possession, may arrest the person named therein at any time. The officer must inform the person arrested that the warrant has been issued and serve the warrant upon him as soon as possible. This subdivision applies even though the arrest process has been returned to the clerk under G.S. 15A-301.</p> <p>(b) Arrest by Officer Without a Warrant. –</p> <p>(1) Offense in Presence of Officer. – An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense, or has violated a pretrial release order entered under G.S. 15A-534 or G.S. 15A-534.1(a)(2), in the officer's presence.</p> <p>(2) Offense Out of Presence of Officer. – An officer may arrest without a warrant any person who the officer has probable cause to believe:</p> <p>a. Has committed a felony; or</p>	<p>Prof. Smith pointed out that the Uniform Act sets some boundaries on a law enforcement officer's authority to make an arrest.</p> <p>Current law gives a law enforcement officer discretion to make an arrest when the officer has probable cause to believe the person has committed a crime in the officer's presence; however, for crimes committed outside of the officer's presence, current law sets some boundaries on the officer's authority to make an arrest.</p> <p>Please note that all of Article 2 of the Uniform Act is bracketed as optional.</p>

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<p>probation, [parole], or release; or</p> <p>(4) [the authorized official] reasonably believes arrest is necessary to:</p> <p>(A) safely conclude [the authorized official's] interaction with the individual;</p> <p>(B) carry out a lawful investigation;</p> <p>(C) protect a person from significant harm; or</p> <p>(D) prevent the individual from fleeing the jurisdiction.</p>	<p>b. Has committed a misdemeanor, and:</p> <p>1. Will not be apprehended unless immediately arrested, or</p> <p>2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or</p> <p>c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2; or</p> <p>d. Has committed a misdemeanor under G.S. 14-33(a), 14-33(c)(1), 14-33(c)(2), or 14-34 when the offense was committed by a person with whom the alleged victim has a personal relationship as defined in G.S. 50B-1; or</p> <p>e. Has committed a misdemeanor under G.S. 50B-4.1(a); or</p> <p>f. Has violated a pretrial release order entered under G.S. 15A-534 or G.S. 15A-534.1(a)(2).</p> <p>(3) Repealed by Session Laws 1991, c. 150.</p> <p>(4) A law enforcement officer may detain an individual arrested for violation of an order limiting freedom of movement or access issued pursuant to G.S. 130A-475 or G.S. 130A-145 in the area designated by the State Health Director or local health director pursuant to such order. The person may be detained in such area until the initial appearance before a judicial official pursuant to G.S. 15A-511 and G.S. 15A-534.5.</p> <p>(c) How Arrest Made. –</p> <p>(1) An arrest is complete when:</p>	

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	<p>a. The person submits to the control of the arresting officer who has indicated his intention to arrest, or</p> <p>b. The arresting officer, with intent to make an arrest, takes a person into custody by the use of physical force.</p> <p>(2) Upon making an arrest, a law enforcement officer must:</p> <p>a. Identify himself as a law enforcement officer unless his identity is otherwise apparent,</p> <p>b. Inform the arrested person that he is under arrest, and</p> <p>c. As promptly as is reasonable under the circumstances, inform the arrested person of the cause of the arrest, unless the cause appears to be evident.</p> <p>(d) Use of Force in Arrest. –</p> <p>(1) Subject to the provisions of subdivision (2), a law enforcement officer is justified in using force upon another person when and to the extent that he reasonably believes it necessary:</p> <p>a. To prevent the escape from custody or to effect an arrest of a person who he reasonably believes has committed a criminal offense, unless he knows that the arrest is unauthorized; or</p> <p>b. To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape.</p>	

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	<p>(2) A law enforcement officer is justified in using deadly physical force upon another person for a purpose specified in subdivision (1) of this subsection only when it is or appears to be reasonably necessary thereby:</p> <ul style="list-style-type: none"> a. To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; b. To effect an arrest or to prevent the escape from custody of a person who he reasonably believes is attempting to escape by means of a deadly weapon, or who by his conduct or any other means indicates that he presents an imminent threat of death or serious physical injury to others unless apprehended without delay; or c. To prevent the escape of a person from custody imposed upon him as a result of conviction for a felony. <p>Nothing in this subdivision constitutes justification for willful, malicious or criminally negligent conduct by any person which injures or endangers any person or property, nor shall it be construed to excuse or justify the use of unreasonable or excessive force.</p> <p>(d1) Duty to Intervene and Report Excessive Use of Force. – A law enforcement officer, while in the line of duty, who observes another law enforcement officer use force against another person that the observing officer reasonably believes exceeds the amount of force authorized by subsection (d) of this section and who possesses a reasonable opportunity to intervene, shall, if it is safe to do so, attempt to intervene to prevent the use of excessive force. Additionally, the observing officer shall, within a reasonable period of time not to exceed 72 hours thereafter, report what the officer reasonably believes to be an unauthorized use of force to a superior</p>	

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	<p>law enforcement officer within the agency of the observing officer, even if the observing officer did not have a reasonable opportunity to intervene. If the head of the law enforcement agency of the observing officer was involved or present during what the observing officer reasonably believes to be unauthorized use of force, the observing officer shall make the report to the highest ranking law enforcement officer of that officer's agency who was not involved in or present during the use of force.</p> <p>(e) Entry on Private Premises or Vehicle; Use of Force. –</p> <p>(1) A law enforcement officer may enter private premises or a vehicle to effect an arrest when:</p> <ul style="list-style-type: none"> a. The officer has in his possession a warrant or order or a copy of the warrant or order for the arrest of a person, provided that an officer may utilize a copy of a warrant or order only if the original warrant or order is in the possession of a member of a law enforcement agency located in the county where the officer is employed and the officer verifies with the agency that the warrant is current and valid; or the officer is authorized to arrest a person without a warrant or order having been issued, b. The officer has reasonable cause to believe the person to be arrested is present, and c. The officer has given, or made reasonable effort to give, notice of his authority and purpose to an occupant thereof, unless there is reasonable cause to believe that the giving of such notice would present a clear danger to human life. <p>(2) The law enforcement officer may use force to enter the premises or vehicle if he reasonably believes that admittance is being denied or unreasonably delayed, or if he is authorized</p>	

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	<p>under subsection (e)(1)c to enter without giving notice of his authority and purpose.</p> <p>(f) Use of Deadly Weapon or Deadly Force to Resist Arrest. –</p> <p>(1) A person is not justified in using a deadly weapon or deadly force to resist an arrest by a law enforcement officer using reasonable force, when the person knows or has reason to know that the officer is a law enforcement officer and that the officer is effecting or attempting to effect an arrest.</p> <p>(2) The fact that the arrest was not authorized under this section is no defense to an otherwise valid criminal charge arising out of the use of such deadly weapon or deadly force.</p> <p>(3) Nothing contained in this subsection (f) shall be construed to excuse or justify the unreasonable or excessive force by an officer in effecting an arrest. Nothing contained in this subsection (f) shall be construed to bar or limit any civil action arising out of an arrest not authorized by this Article.</p> <p>(g) Care of minor children. – When a law enforcement officer arrests an adult who is supervising minor children who are present at the time of the arrest, the minor children must be placed with a responsible adult approved by a parent or guardian of the minor children. If it is not possible to place the minor children with a responsible adult approved by a parent or guardian within a reasonable period of time, the law enforcement officer shall contact the county department of social services. (1868-9, c. 178, subch. 1, ss. 3, 5; Code, ss. 1126, 1128; Rev., ss. 3178, 3180; C.S., ss. 4544, 4546; 1955, c. 58; 1973, c. 1286, s. 1; 1979, c. 561, s. 3; c. 725, s. 4; 1983, c. 762, s. 1; 1985, c. 548; 1991, c. 150, s. 1; 1995, c. 506, s. 10; 1997-456, s. 3; 1999-23, s. 7; 1999-399, s. 1; 2002-179, s. 14; 2004-186, s. 13.1; 2009-544, s. 2; 2011-245, s. 1.)</p>	

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<i>Issue 3: General Hearing Procedures</i>		
<p>SECTION 301. TIMING.</p> <p>(a) Unless an arrested individual is released [under Section 203] after arrest, the individual is entitled to a hearing to determine release pending trial. Except as otherwise provided in subsection (b), the court shall hold the hearing not later than [48] hours after the arrest.</p> <p>(b) The court may continue a release hearing:</p> <p>(1) on motion of the arrested individual; or</p> <p>(2) in extraordinary circumstances, for not more than [48] hours, on its own or on motion of the [prosecuting authority].</p> <p>(c) At the conclusion of a release hearing, the court shall issue an order of pretrial release or temporary pretrial detention.</p> <p>SECTION 302. RIGHTS OF ARRESTED INDIVIDUAL.</p> <p>[(a)] An arrested individual has a right to be heard at a release hearing.</p> <p>[(b) An arrested individual has a right to counsel at a release hearing. If the individual is unable to obtain counsel for the hearing, [an authorized agency] shall provide counsel. [The scope of representation under this section may be limited to the subject matter of the hearing.]]</p>	<p>§ 15A-601. First appearance before a district court judge; consolidation of first appearance before magistrate and before district court judge; first appearance before clerk of superior court.</p> <p>**as amended by Section 10(g) of S.L. 2021-47 and Section 14(a) of S.L. 2021-138**</p> <p>(a) Any defendant charged in a magistrate's order under G.S. 15A-511 or criminal process under Article 17 of this Chapter, Criminal Process, with a crime in the original jurisdiction of the superior court must be brought before a district court judge in the district court district as defined in G.S. 7A-133 in which the crime is charged to have been committed. This first appearance before a district court judge is not a critical stage of the proceedings against the defendant.</p> <p>Any defendant charged in a magistrate's order under G.S. 15A-511 or criminal process under Article 17 of this Chapter, Criminal Process, with a misdemeanor offense and held in custody must be brought before a district court judge in the district court district as defined in G.S. 7A-133 in which the crime is charged to have been committed. This first appearance before a district court judge is not a critical stage of the proceedings against the defendant.</p> <p>(a1), (a2) Repealed by S.L. 2021-47, s. 10(g), effective June 18, 2021.</p> <p>(b) When a district court judge conducts an initial appearance as provided in G.S. 15A-511, the judge may consolidate those proceedings and the proceedings under this Article.</p> <p>(c) Unless the defendant is released pursuant to Article 26 of this Chapter, Bail, first appearance before a district court judge must be</p>	<p>Prof. Smith pointed out that the Uniform Act requires that the court hold a release hearing within a specified time after the arrest. The Uniform Act suggests 48 hours in optional bracketed language. Current law requires that a first appearance before a district court judge be held within 72 hours. (S.L. 2021-138, s. 14(a), shortened it from 96 hours.)</p> <p>Prof. Smith next pointed out that the Uniform Act suggests in optional bracketed language that the defendant have a right to counsel at this release hearing. Current law expressly does not provide this right for a first appearance.</p>

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	<p>held within 72 hours after the defendant is taken into custody or at the first regular session of the district court in the county, whichever occurs first. If the defendant is not taken into custody, or is released pursuant to Article 26 of this Chapter, Bail, within 72 hours after being taken into custody, first appearance must be held at the next session of district court held in the county. This subsection does not apply to a defendant whose first appearance before a district court judge has been set in a criminal summons pursuant to G.S. 15A-303(d).</p> <p>(d) Upon motion of the defendant, the first appearance before a district court judge may be continued to a time certain. The defendant may not waive the holding of the first appearance before a district court judge but he need not appear personally if he is represented by counsel at the proceeding.</p> <p>(e) The clerk of the superior court in the county in which the defendant is taken into custody may conduct a first appearance as provided in this Article if a district court judge is not available in the county within 72 hours after the defendant is taken into custody. A magistrate may conduct the first appearance if the clerk is not available. The clerk or magistrate, in conducting a first appearance, shall proceed under this Article as would a district court judge. (1973, c. 1286, s. 1; 1975, 2nd Sess., c. 983, ss. 139, 140; 1979, c. 651; 1987 (Reg. Sess., 1988), c. 1037, s. 58; 1993, c. 30, s. 2.)</p>	
<i>Issue 4: Limitations on Financial Conditions</i>		
<p>SECTION 307. FINANCIAL CONDITION OF RELEASE.</p> <p>(a) Subject to Sections 308 and 403, the court may not impose a restrictive condition under Section 306 that requires initial payment of a fee in a sum greater than the arrested individual is able to pay from personal financial resources not later than</p>	<p>No comparable statute</p>	<p>Prof. Smith pointed out that the Uniform Act limits when a court can impose a secured bond. The Uniform Act prevents a court from using a secured bond as</p>

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<p>[24] hours after the condition is imposed. If the individual is unable to pay the fee, the court shall waive or modify the fee, or waive or modify the restrictive condition that requires payment of the fee, to the extent necessary to release the individual. If the individual is unable to pay a recurring fee, the court shall waive or modify the recurring fee or the restrictive condition that requires payment of the fee.</p> <p>(b) Before imposing a secured appearance bond or unsecured appearance bond under Section 306, the court shall consider the arrested individual's personal financial resources and obligations, including income, assets, expenses, liabilities, and dependents.</p> <p>(c) Subject to Sections 308 and 403, the court may not impose a secured appearance bond as a restrictive condition under Section 306 unless the court determines by clear and convincing evidence that the arrested individual is likely to abscond, not appear, obstruct justice, or violate an order of protection.</p> <p>(d) Subject to Sections 308 and 403, the court may not impose a secured appearance bond as a restrictive condition under Section 306:</p> <p>(1) to keep an arrested individual detained;</p> <p>(2) for a charge that is not a felony, unless the individual [three or more] times has absconded or did not appear in a criminal case or combination of criminal cases; or</p> <p>(3) the cost of which is an amount greater than the individual is able to pay from personal financial resources not later than [24] hours after the condition is imposed.</p>		<p>a functional detention mechanism, unless the criteria for detention are satisfied.</p> <p>Prof. Smith also pointed out the Uniform Act does not provide a standard for determining a defendant's ability to pay.</p>

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<i>Issue 5: Supportive and Supervisory Services</i>		
<p>SECTION 305. PRACTICAL ASSISTANCE; VOLUNTARY SUPPORTIVE SERVICES.</p> <p>(a) If the court determines under Section 303 that an arrested individual poses a relevant risk, the court shall determine whether practical assistance or a voluntary supportive service, or both, are available and sufficient to address satisfactorily the risk.</p> <p>(b) If the court determines that practical assistance or a voluntary supportive service is available and sufficient to address satisfactorily a relevant risk the court identifies under Section 303, the court shall refer the individual to the practical assistance or voluntary supportive service and issue an order of pretrial release under Section 304(c).</p>	No comparable statute	Prof. Smith pointed out that supportive and supervisory services are funded by county and that many counties do not provide these services.